



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,280	01/20/2004	Joanne Peart	02940086CA	6861
30743 7590 03/30/2009 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190				
EXAMINER				
ALSTRUM ACEVEDO, JAMES HENRY				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
03/30/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte*: JOANNE PEART, PETER R. BYRON, ARON H. LICHTMAN  
AND BILLY R. MARTIN

---

Application No. 10/759,280  
Technology Center 1616

---

Mailed: March 27, 2009

---

Before DEBORAH L. PERRY *Supervisory Paralegal Specialist, Review Team*  
PERRY, *Supervisory Paralegal Specialist, Review Team*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 12, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

“There is a non-statutory double patenting rejection which is not addressed in this appeal.”

### Examiner's Answer

It is not clear from the record what the status is of the two double patenting rejections from the Final Rejection mailed January 25, 2008.

Specifically, the Examiner's Answer dated September 5, 2008, does not address the double patenting rejection of:

1. Claims 43, 46, 48, 50, 52-55 and 57-60 are on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,509,005 (USPN '005); and
2. Claims 43, 46-48, 50, 52-55 and 57-60 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 13-14 and 16 of U.S. Patent No. 6,713,048 (USPN '048). New claims 61-63 are appended to this rejection for the reasons of record.

### CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to vacate the Examiner's Answer dated September 5, 2008;
- 2) on a PTOL-90 provide the disposition of the two double patent rejection from the Final Rejection dated January 25, 2008; and

3) such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DP/dw

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.  
11491 SUNSET HILLS ROAD  
SUITE 340  
RESTON VA 20190